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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/540,289	03/31/2000	Mitsuhiro Agehari	P/2041-47	9847

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EXAMINER

TRAN, KHANH C

ART UNIT PAPER NUMBER

2631

DATE MAILED: 03/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 09/540,289</p>	<p>Applicant(s) AGEHARI, MITSUHIRO</p>	
	<p>Examiner Khanh Tran</p>	<p>Art Unit 2631</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 February 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: 3.
- Claim(s) rejected: 1, 2 and 4.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.


JAY K. PATEL
SUPERVISORY PATENT EXAMINER

Continuation of 11: does NOT place the application in condition for allowance because:

On page 4 of Applicant's Remarks, Applicant disagrees with the above assumption that "the clock 17 as shown in figure 1 of van Nee teachings is constant" and van Nee shows a "dynamic rate control" being input into clock 17. Applicant further argues that the Office action still does not show where in van Nee teachings it discloses "a coding ratio is varied in accordance with an input modulation operation mode to allow a transmission operation with a single input clock signal for any input modulation mode"

The Examiner responds that Applicant's arguments are not persuasive. van Nee teaches a scaleable OFDM system for providing increased flexibility and adaptability by providing scaling of the operating parameters and/or characteristics for the OFDM system. As recited in the Final Rejection and repeated here, in column 3, lines 30-65, van Nee provides four options [Emphasis Added] for doubling the transmission rate (an example in the teachings) in which the operating parameters and/or characteristics of the system can be dynamically scaled or adjusted: varying the coding rate, doubling the carrier modulation scheme by doubling the number of bits per symbol per carrier, halving the symbol duration and doubling the number of carrier. Because of van Nee foregoing suggestions, one of ordinary skill in the art would have recognized the four options are selectable. As recited in the Final Rejection, the act of doubling the number of bits per symbol per carrier (e.g. different carrier modulation scheme) to double the transmission rate, one of ordinary skill in the art at the time of the invention would have recognized that the clock 17 is kept constant because the symbol duration T_s is constant and only the number of bits per symbol change. In light of the foregoing teachings, one aspect of van Nee invention teaches the claimed limitations, which could be chosen as operating parameters.

Furthermore, in column 4 lines 30-45, see also figure 1, van Nee further teaches that the the dynamic control circuitry 15 can be responsive to any of a number of possible inputs to set the coding block 14 to the appropriate coding rate. To scale the number of bits per symbol per carrier, for example, the dynamic rate control circuitry 15 can change from QPSK (quaternary or 4-PSK) modulation to other phase modulations, such as 8-PSK, or to other modulation schemes, such as QAM (quadrature amplitude modulation, e.g., 16-QAM). In light of the aforementioned teachings, referring back to figure 1, with external settings, outputs from dynamic rate control 15 are inputted to coding block 14 and output of clock 17 is inputted to OFDM transmitter. In the case of scaling the number of bits per symbol per carrier as recited above, various modulation schemes selected by the dynamic control circuitry 15 can be inputted to the coding block 14, which set the coding rate appropriately, while keeping the input clock constant. To further clarify the claim rejection, van Nee OFDM transmitter 11 in figure 1 corresponds to the multi-rate transmission apparatus in figure 1 of the instant application, wherein the dynamic control circuitry 15 provides input clock and input modulation mode to the OFDM transmitter 11.

In response to Applicant's arguments van Nee teaches away from a single input clock signal.

The Examiner responses that as explained above, van Nee discloses other aspects (different options) of the invention and the claimed limitations are encompassed in one aspect of van Nee invention.